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National Mediation Board Open Meeting 06-19-2012

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NATIONAL MEDIATION BOARD OPEN MEETING

Tuesday, June 19, 2012

9:07 a.m.

National Labor Relations Board (NLRB)

1099 14th Street, NW

Washington, DC 20005

Reported by: Erick McNair,

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<p>1 A P P E A R A N C E S</p> <p>2</p> <p>3 Mary Johnson - Moderator</p> <p>4</p> <p>5 SPEAKERS:</p> <p>6 Edward Wytkind</p> <p>7 Carla Siegel</p> <p>8 Terry French</p> <p>9 Karen Boerner</p> <p>10 Lee Seham</p> <p>11 Robert Gless</p> <p>12 John Murphy</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 minute break. We hope to conclude today's proceeding</p> <p>2 no later than 11:30.</p> <p>3 During this proceeding neither the NMB board</p> <p>4 members nor the staff will make any remarks, nor will</p> <p>5 we respond to any questions. We expect the</p> <p>6 participants to conduct themselves appropriately and</p> <p>7 will not take lightly any disruptive behavior. We ask</p> <p>8 that each speaker respect the court reporter's</p> <p>9 capabilities and identify yourself at the onset of the</p> <p>10 presentation.</p> <p>11 We will now hear from our first speaker,</p> <p>12 Edward Wytkind.</p> <p>13 MR. WYTKIND: Good morning. Thanks for</p> <p>14 allowing me a chance to present our views regarding the</p> <p>15 board's recent proposed rules on representation</p> <p>16 procedures. I want to first commend the Chair, Linda</p> <p>17 Puchala and member Harry Hoglander for the work that</p> <p>18 you're doing to advance stable and productive</p> <p>19 collective bargaining in the aviation and rail</p> <p>20 industries. You have been tremendous leaders in this</p> <p>21 agency, and we appreciate the work that both of you are</p> <p>22 doing.</p>
3	5
<p>1 P R O C E E D I N G S</p> <p>2 MS. JOHNSON: Okay. We're going to get going</p> <p>3 here. Good morning. I want to welcome you all here</p> <p>4 today and thank you for being here. We are here today</p> <p>5 to hear public comment on the National Mediation</p> <p>6 Board's proposed rule changes. These changes</p> <p>7 incorporate statutory language added to the Railway</p> <p>8 Labor Act by the Federal Aviation Administration and</p> <p>9 Modernization Act of 2012. Notice of the proposed</p> <p>10 changes was published in the Federal Register, Volume</p> <p>11 77, Number 94, Page 28536 on May 15th, 2012. A</p> <p>12 correction was published in Volume 77, Number 110, Page</p> <p>13 33701 on June 7th,</p> <p>14 2012.</p> <p>15 I am Mary Johnson, general counsel of the</p> <p>16 National Mediation Board, and I will be conducting this</p> <p>17 hearing on behalf of the board. Seated to my right are</p> <p>18 board member Harry Hoglander and board Chair Linda</p> <p>19 Puchala and associate general counsel Kate Dowling.</p> <p>20 We have six speakers scheduled. Each speaker</p> <p>21 is slotted for 20 minutes, and this time includes</p> <p>22 transitions between speakers. We will take one ten-</p>	<p>1 The TTD, as you know, has a very large vested</p> <p>2 interest in this proceeding. Our 32 member unions</p> <p>3 represent workers across the entire transportation</p> <p>4 industry, with a large majority of them being covered</p> <p>5 under the Railway Labor Act and the work that the NMB</p> <p>6 does for the country.</p> <p>7 We think this is a very important proceeding.</p> <p>8 As we all know, the rule before us amends the current</p> <p>9 rules to incorporate changes to the Railway Labor Act</p> <p>10 contained in the FAA Reauthorization legislation. The</p> <p>11 board also requests comments on the impact, if any, of</p> <p>12 the amended statutory language on the board's merger</p> <p>13 procedures.</p> <p>14 At the outset I want to make clear that we</p> <p>15 intend to submit full written comments addressing the</p> <p>16 legal issues raised in the board's Notice of Proposed</p> <p>17 Rulemaking. Accordingly, my comments today will focus</p> <p>18 more on broad policy questions and issues.</p> <p>19 Overall, TTD is in agreement that the changes</p> <p>20 contained in the board's rulemaking proposal</p> <p>21 appropriately reflect the recent amendments to the RLA</p> <p>22 that were signed into law. We also recognize that this</p>

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6	<p>1 is not the proper forum in which to analyze the wisdom, 2 or lack of it, in Congress's decision to amend the 3 Railway Labor Act in the FAA bill, nor is this the time 4 or place to address the flawed process through which 5 those changes were enacted. Suffice to say that, in so 6 far as some of the legislative changes appear designed 7 primarily to divert the board's resources from its 8 primary mission, these amendments are unwise; and those 9 changes that are clearly designed to increase the 10 burden on employees seeking a voice on the job are 11 unjust.</p> <p>12 The recent changes to the RLA enacted by 13 Congress are no small matter, as evidenced by this 14 rulemaking. However, it's equally true that the most 15 important and vital elements of the act and the board's 16 mission remain unchanged. The primary goal of the RLA 17 remains a prompt and orderly settlement of all 18 workplace disputes. Both management and labor are 19 still bound by the duty to settle all disputes and make 20 and maintain agreements, what the Supreme Court has 21 called "the heart" of the RLA. The major dispute and 22 minor dispute processes are unaffected by the recent</p>	8
7	<p>1 legislation. The board's vital role in mediating 2 collective bargaining continues without change.</p> <p>3 Critically, the RLA still safeguards the 4 right of employees to organize and bargain collectively 5 free from any carrier influence or coercion. Of 6 course, this standard is being tested as of late by 7 certain airline executives who are devoting significant 8 resources to undermining, or avoiding outright, union 9 representation. Those efforts have not only violated 10 the basic rights of employees, but they have had by 11 design a chilling effect on the ability of workers to 12 pursue or maintain union representation.</p> <p>13 As the board knows, carriers are bound to 14 recognize and negotiate with the duly certified 15 representatives of employees. The board's policy to 16 resolve representation disputes as expeditiously as 17 possible remains in full force. The NMB still 18 exercises broad discretion to conduct an election or 19 utilize any appropriate means to determine employee 20 choice. It is outrageous that, as part of the recent 21 effort to amend RLA, some in Congress, pressured by 22 certain air carriers, sought to roll back the important</p>	9
6	<p>1 voting reforms adopted by the board in 2010. They 2 sought to return us to an undemocratic system that 3 counted nonparticipation as a vote against unionization 4 and required more than 50 percent participation in 5 order for elections to be valid. Fortunately, these 6 legislative attacks on the NMB's voting reforms were 7 unsuccessful, and Federal Courts have affirmed the 8 substance of the rule and the procedures used by the 9 board to implement it.</p> <p>10 I mention this in today's hearing because, as 11 the board is aware, these ill-advised endeavors 12 resulted in gridlock over vital funding of aviation 13 programs in this country; and it was a tactic designed 14 to create a political crisis and eventually resulted in 15 the other labor law changes that are now the subject of 16 today's hearing. Because the core policies embodying 17 the RLA remain unchanged, essentially reaffirmed, the 18 specific changes enacted by Congress must be 19 interpreted and implemented consistent with those 20 bedrock values.</p> <p>21 TTD believes that this is precisely what the 22 board has done thus far in this rulemaking. In this</p>	8
7	<p>1 context, I'd like to address the question of the NMB's 2 merger procedures. The board has requested comments 3 directed at whether the new statutory showing of 4 interest requirement applies to representation disputes 5 raised under the board's merger procedures. As a 6 threshold matter, TTD is pleased that the board has 7 sought comment on the issue and apparently intends to 8 resolve the merger question in the rulemaking process, 9 rather than on a case-by-case basis.</p> <p>10 Employees and unions, as well as carriers, 11 need clear guidance on the merger question in advance 12 of any particular single carrier proceeding. As the 13 board knows, when the carriers merge, employees are 14 often faced with substantial uncertainty regarding key 15 aspects of their working lives. The employees are 16 confronted with the possibility of changes to existing 17 terms of employment and are faced with threats of job 18 security and difficult seniority issues. In these 19 circumstances, we submit that employees should not be 20 faced with additional uncertainty regarding the board's 21 procedures for determining their representation in a 22 merger setting.</p>	9

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10	<p>1 In addition, the board's current merger 2 procedures and practices are well known and understood 3 by unions and carriers alike. The current rules serve 4 to guide the conduct of both labor and management in 5 mergers. If the board were to defer a decision on the 6 merger issue until raised in a particular case, the 7 involved unions and carriers would be forced to proceed 8 with substantial uncertainty. We would also ask that 9 the current merger rules be included in the board's 10 formal regulations to provide consistency and 11 predictability in the process.</p> <p>12 As to whether the new RLA showing of interest 13 requirement applies to the board's merger procedures, 14 TTD firmly believes that it does not. This conclusion 15 is rooted primarily in the language and structure of 16 the Railway Labor Act and the recent amendments. We 17 will set forth these legal arguments fully in our 18 written comments. At their core, however, merger cases 19 concern the impact of a corporate restructuring on 20 existing patterns of representation. As such, these 21 cases are fundamentally different from the 22 representation cases in which a union seeks an entirely</p>	12
11	<p>1 new certification. The legislative history of the new 2 amendments also makes it clear that Congress did not 3 intend for the new showing of interest requirement to 4 apply in mergers. From a policy perspective as well, 5 application of the new showing of interest requirement 6 in the merger setting would be inappropriate and 7 contrary to fundamental goals of the RLA.</p> <p>8 Under the board's current practice, an 9 incumbent union needs only 35 percent of the combined 10 work group in order to make a single carrier 11 application or appear on the ballot in an election 12 triggered by the merger. This is a fair rule. In most 13 cases incumbent unions involved in a merger transaction 14 have been certified for in many times -- in many 15 instances decades. Employees who comprise a 16 substantial minority of the combined workforce should 17 have an equal opportunity to vote in favor of continued 18 representation by their current union. The employees 19 of the smaller group should not be put to the 20 additional task of collecting authorization cards in 21 order to have a vote for their current bargaining 22 representative. In some cases additional requirement to</p>	13

1 present authorizations might delay the initiation of a
2 single carrier proceeding, a result at odds with the
3 RLA's aim to settle disputes promptly.

4 I'd also like to address one additional
5 matter related to the new showing of interest
6 requirement under the RLA amendments. One of the
7 unfortunate effects of the board's old voting rule was
8 the incentive for carriers to try to manipulate
9 official eligibility lists. Under the old rule,
10 carriers sought to increase the odds of defeating
11 unionization by padding voting lists with hard to reach
12 workers or individuals no longer employed at the
13 company. One of the many compelling reasons for the
14 voting rule change was to curtail this obvious tactic.

15 Unfortunately, as a recent case involving
16 passenger service employees at American Airlines amply
17 demonstrates, carrier attempts to gain the eligibility
18 list live on. Regrettably, the new RLA's showing of
19 interest requirement may exacerbate this problem.
20 TTD's concerned that carriers will now have even
21 greater incentive to include individuals with no or
22 questionable ties to the craft or class on the voter

1 list provided to the board. In essence, carriers may
2 manipulate the list in an effort to prevent employees
3 from even having an opportunity to trigger a vote on
4 representation. In addition under the new law,
5 disputes over the eligibility, which in the past
6 generally occurred only after the board authorized an
7 election, are now likely to occur at a much earlier
8 stage in the process.

9 The board should act to counter abuses of
10 this election process. It possesses the authority and
11 the means to do so. For example, through its
12 representation manual, the board could implement
13 procedures to expeditiously address eligible voter
14 disputes arising during the showing of interest phase
15 in the election process. The NMB could also require
16 greater disclosure by carriers of the basis for
17 including individuals on the list of eligible voters.
18 In addition, remedies with real consequences could be
19 imposed for the submission of lists in bad faith or
20 without proper foundation.

21 In closing, the recent amendments to the law
22 obviously require some changes to the board's

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14	<p>1 procedures, but indeed may present some new challenges 2 in terms of administering the Railway Labor Act. 3 However, the basic principles to guide the board in 4 resolving the issues before it are the same as in the 5 past. We thank the board for the opportunity to weigh 6 in on these important rule changes before the agency. 7 Thank you. 8 MS. JOHNSON: Thank you. Carla Siegel. 9 MS. SIEGEL: Thank you. I am Carla Siegel. 10 I'm Deputy General Counsel for the International 11 Association of Machinists and Aerospace Workers, and I 12 do too want to start off by thanking the board for this 13 opportunity to address some issues with regard to your 14 proposed rulemaking. 15 The IAM also does intend to submit a 16 statement in accordance with the timelines that you 17 have set forth discussing all of the issues that you've 18 raised. 19 In general, the IAM does not oppose the 20 board's proposed changes. However, we wanted to take 21 this opportunity to address the board's question 22 regarding the RLA's application to the -- the RLA</p>	16
15	<p>1 amendment's application to the merger setting. The IAM 2 fully supports the position statement of the TTD, and 3 we take this opportunity to speak separately only to 4 emphasize that the Railway Labor Act's goals of labor, 5 peace and stability are best served by continuing the 6 board's existing policy with regard to mergers. 7 Two of the major goals of the Railway 8 Labor Act were: One, to forbid any 9 limitation upon the freedom of association among 10 employees or any denials in condition of employment on 11 the right of employees to join a labor organization; 12 and two, to provide for the complete independence of 13 employees in self organization. Section 2, Ninth, 14 giving the board the authority to determine who the 15 representatives shall be without interference from the 16 carrier, was an important vehicle for achieving these 17 goals. 18 In the 1920s and the 1930s, as the board's 19 well aware, company unions were common and often 20 employees in the same classification belonged to 21 separate unions, causing a lot of friction in the 22 workplace. With the passage of the Railway Labor Act,</p>	17
14	<p>1 and particularly 2, Ninth, order was restored to the 2 workplace by ensuring a peaceful method of determining 3 who the single representative would be for the entire 4 craft or class. 5 While Congress chose not to dictate the means 6 by which this selection would be made either originally 7 or in the amendments, it did grant the NMB the 8 exclusive jurisdiction to make that determination, and 9 since then the Courts have consistently deferred to the 10 board in its determinations of how a representative 11 would be selected, for example, deferring to the 12 board's use of secret ballot elections in which the 13 majority of all eligible voters had to reject 14 representation, secret ballot elections in which the 15 majority of those who cast votes determine the outcome, 16 or even using card check authorizations. 17 The purpose of a showing of interest 18 requirement is to ensure that the board's resources are 19 not wasted in elections in which there's not a 20 legitimate interest in representation. Congress has 21 now decided that, for applications seeking to become a 22 newly certified representative under the Railway Labor</p>	16
15	<p>1 Act, that showing of interest requirement is 50 2 percent. Congress did not, however, explicitly address 3 the showing of interest requirement with regard to 4 mergers in the amendments, leaving the matter to the 5 board's sound discretion. 6 In a merger or other corporate change of 7 structure where the employees already have had 8 representation, the general purposes behind a showing 9 of interest requirement have already been met. The 10 employees have already selected a representative, and 11 oftentimes they've been represented for decades under 12 successive Collective Bargaining Agreements. The 13 entire culture of the workplace may be surrounded by a 14 collective bargaining relationship. Thus, the board 15 can already be assured that there's a legitimate 16 interest in representation. 17 The fact that the carrier has decided to 18 change its corporate structure should not penalize the 19 employees in their choice of a representative. 20 Otherwise, carriers will have the opportunity to 21 unilaterally remove the employee's chosen 22 representative simply by changing its corporate</p>	17

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18	<p>1 structure. By merging carriers or making a strategic 2 acquisition, a carrier could get rid of a union that it 3 didn't want by ensuring that the workforce with the 4 union that the carrier no longer wanted to treat with 5 comprised less than 50 percent of the combined 6 workforce. In this way, the carrier would directly 7 influence the employee's choice of a representative, 8 contrary to the purposes of the act.</p> <p>9 It is of course axiomatic that, in every 10 combination of two carriers, one work group will not 11 comprise 50 percent of the combined workforce. 12 Therefore, if 2, Twelfth were to be implied to apply to 13 a corporate change in structure in every merger or 14 acquisition, one incumbent union might be kept off the 15 list -- off the ballot. While there's still an 16 opportunity for the smaller or incumbent organization 17 to raid the larger one to get sufficient cards, the 18 burden on the smaller incumbent organization is 19 significant, and this type of a raiding preceding an 20 election can also be a significant disruption to the 21 workforce; and that type of disruption would be 22 unjustified if both incumbent organizations were</p>	20
19	<p>1 comparable.</p> <p>2 Even if a carrier were not intentionally 3 trying to keep one union off the ballot, the effect 4 nonetheless may be to deprive the employees of their 5 free choice of a representative. This is true even if 6 there was no union representation among carriers. The 7 carriers, intentionally or otherwise, could thwart the 8 employee's long-held representation by merging a 9 unionized carrier with a larger nonunion carrier. If 10 the incumbent organization had to have a showing of 11 representation or of interest of 50 percent and if they 12 only had 49 percent, for example, of the combined 13 carrier and 2, Twelfth were to apply, once the board 14 found a single transportation system to exist, it 15 wouldn't even authorize an election to determine if the 16 employees could keep their representative. The 17 carrier's decision about the corporate structure would 18 effectively decertify the union without the employees 19 having any voice whatsoever. Yet for decades the 20 board's practice has recognized that in this scenario 21 the two work groups are comparable, and therefore an 22 election should be held to determine the impact on the</p>	21
20	<p>1 merger -- of the merger on the existing certifications. 2 The board should continue to apply its long- 3 held practice of first determining if the two groups 4 are comparable, which this board has defined as a 65/35 5 ratio at least. If they are comparable, the board 6 should hold an election with the two incumbent 7 organizations on the ballot and allow the employees to 8 select the representative, if any, that they prefer. 9 If the groups are not comparable, then the smaller 10 group will have an opportunity to collect cards to 11 reach the 35 percent showing; and if they are able to 12 do that, then the election should go forward.</p> <p>13 Allowing the comparable incumbent unions on 14 the ballot along with the no-union option brings 15 greater labor peace and stability to the workforce. 16 Employees who may be very loyal to their existing union 17 are more likely to accept having to change 18 representatives due to the result of an election than 19 they are to have a new representative forced upon them 20 without even the option of selecting their old 21 representative. By allowing both incumbents on the 22 ballot, the winner can be more readily accepted as the</p>	22
21	<p>1 legitimate choice of the employees and the worker can 2 begin to be effectively integrated.</p> <p>3 However, if the larger organization is simply 4 foisted on the smaller, albeit comparable group, 5 without even an opportunity to vote, which might happen 6 if an incumbent needed 50 percent to appear on the 7 ballot, the smaller yet comparable group is likely to 8 remain disgruntled and to feel disconnected, making 9 integration much more difficult. While this is 10 possible in any numeric combination, even a 90/10 11 split, we recognize that the board is allowed to 12 balance numerous considerations, including its own 13 resources, to decide where that cutoff should be.</p> <p>14 Again, the longstanding practice of this 15 board has been to use a 65/35 percent split, and this 16 is practical, not just for the board's resources, but 17 when the numbers are not comparable, as they would not 18 be if the incumbent organization didn't even have a 35 19 percent showing of interest or of representation, the 20 employees are more likely to accept the fact that the 21 larger union is the new representative. Nothing about 22 the wording of 2, Twelfth detracts from this analysis.</p>	23

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<p style="text-align: right;">22</p> <p>1 Given the statute's silence with regard to 2 the mergers, the board has the discretion to adopt 3 regulations on this matter. Both the placement of 2, 4 Twelfth in the act and the wording of the amendment 5 itself support the board maintaining its longstanding 6 practice of placing all incumbent unions on the ballot 7 when the size is comparable. Further supporting this 8 interpretation is the colloquy in which the Senators 9 made clear that this new 50 percent threshold was not 10 to apply in this type of a corporate reorganization of 11 merger setting.</p> <p>12 In short, the goals of the Railway Labor Act 13 to promote labor stability and peace are best served by 14 continuing the board's longstanding policy on mergers 15 and acquisitions. As a result, the IAM urges the board 16 to adopt its existing merger procedures as part of its 17 formal regulations. And again, I want to thank the 18 board for this opportunity to address this matter, and 19 the IAM will address all of the matters more fully in 20 the written statements. Thank you.</p> <p>21 MS. JOHNSON: Thank you. Terry French? 22 MR. FRENCH: Good morning, Chairwoman</p>	<p style="text-align: right;">24</p> <p>1 requires labor organizations to produce authorizations 2 from at least 50 percent of the craft or class before 3 the board will authorize an election or determine the 4 representation desires of those particular employees.</p> <p>5 Unfortunately, this provision makes it more 6 difficult for unrepresented employees to obtain desired 7 union representation. But it is clear to AFA that 8 Congress did not intend to apply this new showing of 9 interest standard in mergers involving previously 10 certified unions. Significantly, the language of 11 Section 2, Twelfth does not reference mergers, and the 12 only legislative history on the issue supports the same 13 conclusion.</p> <p>14 As Senate Majority Leader Harry Reed stated 15 in the colloquy on the floor of the Senate on February 16 6th, 2012, "It is our intent that the National 17 Mediation Board's existing merger procedures shall 18 determine the percent of the craft or class to 19 establish showing of interest. Otherwise, employees 20 could lose their representation simply by merging with 21 a slightly larger unit without having the opportunity 22 to vote, which is unacceptable."</p>
<p style="text-align: right;">23</p> <p>1 Puchala, board member Hoglander. I am Terry French, a 2 flight attendant for Pinnacle Airlines. I'm also 3 Association of Flight Attendants Master Executive 4 Counsel and President for the former Mesaba Airlines 5 flight attendants who are currently involved in a 6 representation election as a result of the merger 7 between Pinnacle, Mesaba and Colgan airlines.</p> <p>8 I'm appearing on behalf of the Association of 9 Flight Attendants-CWA, which thanks the board for 10 providing this opportunity for AFA to give its views on 11 the recently enacted amendments to the Railway Labor 12 Act.</p> <p>13 Given its vast experience with representation 14 elections and mergers under the Railway Labor Act, AFA 15 believes it is uniquely positioned to provide its 16 comments on the policy the board should establish to 17 implement these amendments. Specifically, AFA would 18 like to address the effects of newly enacted Section 2, 19 Twelfth to the RLA on representation disputes that 20 arise from the merger of two or more carriers. That new 21 provision, passed over the vehement objection of AFA 22 and almost all other transportation unions, now</p>	<p style="text-align: right;">25</p> <p>1 In addition, neither the makers of Section 2, 2 Twelfth, nor its supporters, contradicted Senator 3 Reed's explicit conclusion, nor did they propose an 4 alternative one. Senator Reed's unchallenged statement 5 reflects Congressional intent that 50 percent showing 6 of interest shall not apply to representation disputes 7 arising from mergers. AFA strongly urges the board to 8 adopt this interpretation of 2, Twelfth.</p> <p>9 Furthermore, Senator Reed's clear expression 10 of Congressional intent is consistent with the board's 11 longstanding policy of treating representation disputes 12 arising from mergers differently than disputes 13 initiated by unrepresented employees in a non-merger 14 setting. In fact, it is well established that, one, the 15 board has the legal authority to determine 16 representation restructuring disputes arising from 17 mergers, two, that the board does not apply to mergers 18 the same showing of interest or barter rules applied in 19 representation disputes and non-mergers, and three, 20 that representation issues arising from mergers involve 21 the determination of whether existing representation 22 structures are affected by the merger. In other words,</p>

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26	<p>1 the employees have already expressed their desire for 2 union representation. The only unresolved issue is the 3 identity of the representative at that post-merger 4 carrier.</p> <p>5 But the best illustration of the potentially 6 devastating impact Section 2, Twelfth could have on 7 existing representation rights is the situation now 8 being experienced by the Pinnacle, Mesaba and Colgan 9 flight attendants. To review, Mesaba flight attendants 10 have been represented by AFA since 1999. Since that 11 time, AFA has negotiated several Collective Bargaining 12 Agreements and has successfully navigated the Mesaba 13 flight attendants through the treacherous waters of 14 bankruptcy and 1113.</p> <p>15 In July 2010, Mesaba was purchased by 16 Pinnacle Airlines, which also owns Colgan Airlines. 17 Colgan and Pinnacle flight attendants are represented 18 by another union that far outnumbers the Mesaba flight 19 attendants. After maintaining separate airlines for 20 about a year, Pinnacle announced it was restructuring 21 its operations and ultimately decided, after many false 22 starts, to merge all three airlines.</p>	28	
27	<p>1 In response to this corporate restructuring, 2 AFA filed an application with the NMB in June 2011 3 asking it to find that a single transportation system 4 had been created through the merger of these three 5 airlines. While the representation dispute was 6 pending, Mesaba flight attendants were subjected to 7 drastic company imposed unilateral changes in their 8 working conditions.</p> <p>9 While AFA certification remained in place, 10 the company refused to recognize it and adamantly 11 refused to negotiate with AFA over any contractual 12 changes. Once the board found a single carrier to 13 exist, however, AFA quickly marshalled its supporters 14 and obtained sufficient authorizations to get on the 15 election ballot. Though AFA represents only 30 percent 16 of the entire flight attendants group, we managed to 17 obtain valid authorizations from over 50 percent of the 18 craft or class, but that outcome was not guaranteed and 19 the significant showing of interest is a reflection of 20 the deep anger and uncertainty experienced by flight 21 attendants affected by this merger.</p> <p>22 To be clear, the Pinnacle, Mesaba and Colgan</p>	<p>1 flight attendants are frustrated, and they want to 2 ensure that AFA remains as a choice on the election 3 ballot. If section 2, Twelfth had applied to this 4 merger, it would have jeopardized AFA's longstanding 5 representation rights, potentially leaving AFA banished 6 from the election ballot and its certification 7 extinguished only because it could not persuade almost 8 a majority of the craft or class to sign ballot 9 authorizations.</p> <p>10 Under the current NMB merger rules, a 35 11 percent showing of interest adequately demonstrates 12 significant support for an incumbent union, and that 13 union should be on the ballot. No reading of the RLA 14 can possibly support a ballot that results in loss of 15 certification without an election, particularly where a 16 union enjoys the support of almost half the craft or 17 class.</p> <p>18 In conclusion, AFA's experience in the 19 Pinnacle merger confirms its view that the application 20 of Section 2, Twelfth for representation disputes in 21 arising mergers is contrary to Congressional intent and 22 inconsistent with employee free choice under the RLA;</p>	29

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30	<p>1 board took an important first step in addressing the 2 inferior organizing rights imposed on airline and 3 railroad workers. At long last workers will be free 4 from the government fiat that a non-vote is a no vote. 5 We will enjoy the same democratic standard applied to 6 workers of every other private industry, the same 7 democratic standard applied to every national, state 8 and municipal election in the country. Indeed, the 9 striking irony is that, if the old RLA standard 10 requiring a majority of eligible voters were applied to 11 the country's national election in 2010, most of the 12 legislators in the United States Congress would have 13 joined the ranks of the unemployed.</p> <p>14 Unfortunately, the NMB's achievement of 15 equality in the vote count was offset by Congress's 16 further aggravation of the discriminatory standard 17 applied to obtaining a vote in the first place. The new 18 50 percent standard now applicable to airline and 19 railroad workers is two thirds higher than the standard 20 applied to every other private industry. There is no 21 policy rationale for this discriminatory standard, and 22 we of course do not blame the board. It was an ugly</p>	32	<p>1 units, crafts or classes as defined by the NMB instead 2 of bargaining units that are responsive to the workers 3 as they define them, and in the absence of any 4 administrative process that affords an employee 5 protection from retaliation for engaging in organizing 6 activity.</p> <p>7 Workers at unorganized carriers who believe 8 in collective bargaining live in fear. They live in 9 fear because there is no NLRB for them. There is no 10 agency that will lift a finger to protect their jobs if 11 they assert their right to organize. For them, the 12 words of Section 2, Third and Section 2, Fourth of the 13 Railway Labor Act are empty promises. Their reality is 14 that their right to organize, the law of the land, can 15 be violated with impunity; and the simple truth is that 16 the board, albeit via the compulsion of the United 17 States Congress, has just made their situation far 18 worse by imposing a 50 percent authorization card 19 threshold, which will increase the duration of their 20 exposure.</p> <p>21 It is time for the NMB to consider 22 compensation for the RLA's ongoing discriminatory</p>
31	<p>1 political bargain struck by a dysfunctional Congress 2 which chose to use the FAA and airline safety as 3 hostages. That's not inflammatory rhetoric. That's 4 just what happened.</p> <p>5 So where do we go from here? The current 6 situation raises the need for two fundamental policy 7 objectives going forward. One, to the extent permitted 8 to the board by statute, the board should not pursue 9 the policy of according inferior organizing rights to 10 workers in the airline and railroad industries. AMFA's 11 written comments address the context of election 12 interveners and mergers. The speakers before me have 13 eloquently addressed the issue of mergers, so I won't 14 address that issue as I stand before you today.</p> <p>15 Two, the board should pursue policies that 16 fulfill the promise of the RLA statutory language. In 17 short, the board should enforce the federal legal right 18 to bargain collectively. Our written comments 19 reference a few of the discriminatory standards that 20 made organizing under the RLA difficult in the extreme, 21 including limiting organization to carrier wide 22 bargaining units, limiting organization to bargaining</p>	33	<p>1 treatment of airline and railroad workers by developing 2 agency mechanisms to enforce workers' organizing rights 3 under Section 2, Third and 2, Fourth. Federal law 4 should not be an empty promise. Thank you.</p> <p>5 MS. JOHNSON: Thank you. Robert Gless? 6 MR. GLESS: Good morning. Good morning, 7 Chairman Puchala and member Hoglander. I am Robert 8 Gless, Deputy Director of the Air Transport Division of 9 the Transport Workers Union of America.</p> <p>10 The TW appreciates the opportunity to provide 11 the board with an expression of TW's views in response 12 to the Notice of Proposed Rulemaking regarding the 13 board's plans to conform its regulations to the changes 14 made to the Railway Labor Act -- I'm sorry for that -- 15 in the Federal Aviation Modernization and Reform Act of 16 2012.</p> <p>17 TW also appreciates the opportunity to 18 respond to the board's request for comments on the 19 impact, if any, of the amendments to the act on the 20 board's merger procedures.</p> <p>21 TW recognizes that, as a result of the recent 22 amendments to the Railway Labor Act, it is necessary</p>

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34	<p>1 for the board to modify some of its regulations 2 concerning representational procedures. In particular, 3 it is necessary for the board to modify its regulations 4 regarding the required showing of interest for 5 representation elections when effort is made to become 6 a certified representative of a craft or class or to 7 replace an existing representative. It is also 8 necessary to change the regulations concerning runoff 9 elections.</p> <p>10 In response to the Notice of Proposed 11 Rulemaking, the TW endorses the statement provided by 12 the transportation department of the AFL-CIO and adopts 13 the statement on its own behalf, in particular TW's 14 concerns in the TTD statement. The TW concurs in the 15 TTD's statement in response to the board's request for 16 comments as to whether new Section 2, Twelfth applies 17 to the board's merger procedures. The TW submits that 18 it does not.</p> <p>19 Section 2, Twelfth is titled showing of 20 interest for representation elections. It applies when 21 the board receives an application requesting that an 22 organization or individual be certified as a</p>	36	<p>1 Since a proceeding under the merger procedure 2 is initiated as a result of a corporate transaction 3 involving the carrier or carriers that may affect an 4 existing representative or representatives and not a 5 result of an effort by an organization or an individual 6 to become a representative, the TW submits that Section 7 2, Twelfth does not apply to the merger procedures.</p> <p>8 The TW further submits that, while there is 9 no need for the board to change its merger procedures, 10 because of the creation of Section 2, Twelfth, it is 11 time for the board to codify the merger procedures in 12 its regulations, rather than merely keep them in the 13 representation manual.</p> <p>14 Thank you to the board for this opportunity 15 to submit initial statements in response to the Notice 16 of Proposed Rulemaking and to file a more detailed 17 comment as required in the board's notice. Thank you 18 so much.</p> <p>19 MS. JOHNSON: Thank you. Our last speaker -- 20 scheduled speaker isn't here yet, so we'll take a break 21 now.</p> <p>22 (Recess from 9:44 a.m. to 10:36 a.m.)</p>
35	<p>1 representative for any craft or class of employees. By 2 contrast, the merger procedure applies -- I'm sorry -- 3 applied in a situation when there is a certified 4 representative for a craft or class on a carrier and 5 that carrier is involved in a corporate transaction 6 with another carrier, the employees in the craft or 7 class of the other carrier are represented by another 8 organization or are unrepresented, and that transaction 9 may change the nature of that transportation system.</p> <p>10 In this situation there is no effort by an organization 11 to become certified as a representative for the craft 12 or class. The union or unions representing the craft 13 or class on one or more of the pre-transaction carriers 14 is or are already certified as a representative or the 15 representatives.</p> <p>16 The question before the board in those cases 17 are whether the transaction has altered the nature of 18 the transportation system and whether such a change 19 requires a board investigation as to the representation 20 of the craft or class because of the board's practice 21 of requiring systemwide representation of a craft or 22 class.</p>	37	<p>1 MS. JOHNSON: Our final speaker is John 2 Murphy.</p> <p>3 MR. MURPHY: Hi. Good morning. Members of 4 the board, I'm John Murphy, the International Vice 5 President for the International Brotherhood of 6 Teamsters and Director of the Teamsters Rail 7 Conference, which includes the Brotherhood of 8 Locomotive Engineers and Trainmen and the Brotherhood 9 of the Maintenance of Way Employees.</p> <p>10 I speak today on behalf of the more than 11 150,000 teamsters who work under the Railway Labor Act 12 each and every day in both the rail and aviation 13 industries, representing by the BLET, the BMWED and the 14 IBT Airline Division in response to the board's Notice 15 of Proposed Rulemaking.</p> <p>16 Considering the question asked by the board 17 whether the 50 percent showing of interest requirement 18 mandated by Congress under the FAA Reauthorization Bill 19 for applications for representation elections ought to 20 be applied also under the board's merger policy set 21 forth in Section 19 of its representation manual, the 22 IBT does not believe it is either necessary or</p>

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38	<p>1 appropriate to do so.</p> <p>2 I wish to first state the IBT's position</p> <p>3 concerning the NMB's proposed amendments to its rules</p> <p>4 set forth in the MBRM. Concerning the board's proposed</p> <p>5 modification to Section 1206.1 of its rules governing</p> <p>6 runoff elections, the board's proposal appears</p> <p>7 generally to implement Congress's directive concerning</p> <p>8 runoff elections. The board's proposed modification to</p> <p>9 Section 1206.2, establishing the percentage of valid</p> <p>10 authorizations required to support an application</p> <p>11 requesting certification as representative, also</p> <p>12 accurately implements Congress's directive.</p> <p>13 Concerning the board's proposed amendment to</p> <p>14 Section 1206.5 of its rule, the IBT agrees that the</p> <p>15 board should apply the increased showing of interest</p> <p>16 requirement to applications of interveners in</p> <p>17 representation elections, requiring an intervener to</p> <p>18 make a similar showing that's consistent with the</p> <p>19 statutory goal of maintaining stability in labor</p> <p>20 relations, as well as being consistent with Congress's</p> <p>21 directive under the FAA Reauthorization Bill.</p> <p>22 The board has also long required interveners</p>	40	
39	<p>1 to make the same showing of interest among unorganized</p> <p>2 employees as that made by the applicant. To permit</p> <p>3 another party to intervene on a reduced showing of</p> <p>4 interest would conflict with long-established board</p> <p>5 practice on this subject and would complicate the</p> <p>6 election and potentially create confusion among</p> <p>7 employees.</p> <p>8 From an administrative standpoint, permitting</p> <p>9 intervention under a lesser standard would necessarily</p> <p>10 generate more multiple party elections that in turn</p> <p>11 would potentially increase the number of runoff</p> <p>12 elections held by the board. Moreover, adding parties</p> <p>13 to election increases the likelihood of post-election</p> <p>14 protests that both introduce uncertainty to the</p> <p>15 resolution of the final dispute and affect the speed by</p> <p>16 which that resolution occurs.</p> <p>17 For all of these reasons, we believe the</p> <p>18 board should maintain its practice of requiring the</p> <p>19 same showing of interest by interveners.</p> <p>20 As I stated in my introduction, the IBT does</p> <p>21 not believe it is either necessary or appropriate for</p> <p>22 the board to apply a 50 percent showing of interest</p>	<p>1 requirement to a representation election occurring</p> <p>2 under its merger procedures. The FAA Reauthorization</p> <p>3 Bill does not by its terms mandate such a result. The</p> <p>4 statute only amends the RLA to require that the NMB</p> <p>5 apply a showing of interest of not less than 50 percent</p> <p>6 of valid authorizations when an organization or an</p> <p>7 individual files an application requesting that it be</p> <p>8 certified as the representative of any craft or class</p> <p>9 of employees. This does not occur under the board's</p> <p>10 merger procedures. Rather, a representative files,</p> <p>11 under Section 19.3 of the representation manual, a</p> <p>12 request for the board to investigate whether a single</p> <p>13 transportation exists among two or more carriers; and</p> <p>14 while the investigation unquestionably occurs under</p> <p>15 Section 2, Ninth of the RLA, it is not the application</p> <p>16 contemplated by the Reauthorization Bill. It is only</p> <p>17 after the board first determines that a single</p> <p>18 transportation system exists that it will proceed to</p> <p>19 consider other representation issues. But no further</p> <p>20 application is submitted by any existing</p> <p>21 representative. Because existing certifications</p> <p>22 continue in effect at the involved carriers and the</p>	41

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42	<p>1 Further, if a multi-carrier transaction 2 occurred and no one carrier was substantially larger 3 than the other carriers, there is the potential that no 4 representative could exceed 50 percent of a putative 5 combined craft to class under Section 19.3; and so no 6 one under that case could invoke the board's merger 7 procedures. If the board determines a single system 8 exists, it will consider representation issues and 9 review the relative size of the pre-transaction crafts 10 and classes to determine if election is required. Only 11 if the represented groups of the involved 12 representatives are disproportionate will the board 13 extend the certification of one existing representative 14 to the entire single system without election. 15 Otherwise, the board requires a necessary showing of 16 interest of 35 percent for an existing representative 17 or intervener to appear on a ballot and election 18 arising from the single carrier determination. 19 Increasing the showing of interest 20 requirement at the subsequent representation phase of a 21 single carrier proceeding would be just as impractical 22 as the initial application stage. Increasing that</p>	44
43	<p>1 threshold to 50 percent would mean that, if the board 2 could not measure the relative size of the involved 3 pre-merger crafts or classes, only one representative 4 could have more than a 50 percent showing of interest. 5 The board would therefore extend a certification if a 6 representative had more than a 50 percent showing. This 7 would result in fewer elections in merger situations, 8 or in the alternative the board would have to conduct 9 an election in every proceeding, regardless of how 10 disproportionate the relative sizes of the involved 11 employee groups. That would be contrary to the act by 12 permitting the mere occurrence of a transaction to 13 raise a representation dispute. We do not believe 14 Congress intended these results by its amendments or 15 the act to address a different question of 16 representation. 17 In summary, the IBT believes the board's 18 proposed amendments to its rules are generally properly 19 drafted consistent with the Congressional mandate and 20 the FAA Reauthorization Bill, and otherwise consistent 21 with the RLA. We believe that the board need not, and 22 should not, increase the showing of interest standard</p>	45
	<p>1 established under its mergers procedures. That 2 permissible policy judgment should be reflected in the 3 regulations under consideration. Thank you for your 4 time and consideration. 5 MS. JOHNSON: Thank you. That concludes this 6 hearing. 7 (Whereupon, the meeting was adjourned at 8 10:46 a.m.) 9 10 11 12 13 14 15 16 17 18 19 20 21 22</p> <p>1 CERTIFICATE OF NOTARY PUBLIC 2 3 I, ERICK MCNAIR, the officer before whom the 4 foregoing was taken, do hereby certify that the 5 testimony appearing in the foregoing transcript was 6 recorded by me and thereafter reduced to typewriting 7 under my direction; that said transcription is a true 8 record of the testimony given by said parties; that I 9 am neither counsel for, related to, nor employed by any 10 of the parties to the action in which this was taken; 11 and further, that I am not a relative or employee of 12 any counsel or attorney employed by the parties hereto, 13 nor financially or otherwise interested in the outcome 14 of this action. 15 16 17 18 19 ERICK MCNAIR 20 Notary Public in and for 21 District of Columbia 22 My Commission Expires: July 14, 2016</p>	

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1 CERTIFICATE OF TRANSCRIBER

2

3 I, Stacey L. Daywalt, hereby certify that I am not
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5 proceeding and that I have typed the transcript using
6 the Court Reporter's notes and recordings. The
7 foregoing/attached transcript is a true, correct and
8 complete transcript of a portion of said proceeding.

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Date Stacey L. Daywalt
Transcriptionist

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